IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2445 OF 2005

Shri S.R.Jagdale & Ors. ...Applicants

Versus

State of Maharashtra ...Respondent

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Messrs.A.P.Mundargi with Abhay Nevgi, Mudit Sharma and Manish Desai i/b Paras Kuhad & Associates for Applicants.

Mr.V.B.Konde-Deshmukh, A.P.P. for Respondent.

Mr.Uday Warunjikar for Investor.

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CORAM: A.M.KHANWILKAR, J.

MAY 2, 2005.

P.C.

1. Heard Counsel for the parties. Perused the record.

2. The Applicants are apprehending arrest in respect of offences registered with MIDC Police Station, Kupwad, Sangli, for offences punishable under Sections 403, 408, 467, 468, 477A and 420

read with Section 34 of the Indian Penal Code.

3. The Applicants are the Directors of the Bank in respect of which, the said F.I.R. has been registered by one Shri.Dhondiram Chougule, District Special Auditor, Class-I. Allegations are made about the irregular and improper allocation of finance to persons related to the Chairman, Vice Chairman, Manager, Managing Director and Director.

4. The present Application is for anticipatory bail preferred by the Applicants. According to the Applicants, assuming that certain improper allocation of finance has been done in favour of certain persons, even so, the Applicants cannot be held responsible for the said transactions and, in any case, dishonest intention cannot be attributed to the Applicants. This submission, was made on the basis of specific instances given in the F.I.R.

5. On perusing the F.I.R., as a whole, in particular, from the allegations at pages 56 onwards, it is certainly the case of the

prosecution that the Applicants who are Directors of the Bank, were responsible along with the co-accused for dishonestly using or disbursing the funds of the Bank in favour of relations of the Officials of the Bank, in violation of the Regulations or instructions issued by the Reserve Bank of India from time to time.

6. From the materials on record, it is evident that loan has been given to close relations (brother-in-law) of Chairman Pravin S.Lunkad to the extent of Rs.100 lakhs. It also appears that loan has been given to the close relations (father-in-law, brother-in-law and mother-in-law) of Umesh Chandrakant Babar, who is one of the employee of the Bank, to the extent of Rs.60 lakhs. It is also seen that advances have been given to the parties where Vice-Chairman K.G.K. Rao was personally interested or his wife was partner in the said firms. Those disbursements are to the extent of around Rs.82 lakhs. Besides, one of the Director Dnyandeo Apparao Shendge has availed of loan to the extent of Rs.2 lakhs. These are the broad items which are mentioned in the first

information report, relating to finance given in violation of circulars and guide-lines of the Reserve Bank of India.

7. Mr.Mundargi for the Applicants had vehemently contended that offence under Section 408 will not be attracted because there is no allegation of misusing the funds by the Directors themselves. The argument, however, overlooks the definition of criminal breach of trust in Section 405. It also provides where the amount has been dishonestly used or disbursed in violation of any direction of law prescribing the mode in which such trust is to be discharged.

8. The argument before this Court was then expression "dispose" would mean that the property is finally disposed of. Whereas, in the present case, the amount is given as advance and each of the loanee has accepted the fact of having received the said amount and showed willingness to repay the same.

9. The question, however, which remains to be

answered, at this stage, is whether the disbursal made by the Officials was in violation of any direction of law. Considering the fact that disbursal was in favour of the close relatives of the Directors or otherwise, as mentioned earlier, at this stage, it will have to be accepted that the disbursal were dishonest because the same were clearly in excess of the disbursal provided under the guide-lines of the Reserve Bank of India from time to time.

10. Viewed in this perspective, the offence under Section 408 will be attracted. In any case, the matter is still at the stage of investigation and it is matter of record that the Applicants before this Court were party to the Resolutions at one stage or the other, when the loan in favour of the concerned persons was, in any case renewed. I see no reason to depart from the finding recorded by the lower Court in rejecting the prayer for anticipatory bail of the present Applicants.

11. Accordingly, having regard to the seriousness of the offence and prima face there is

some material to indicate the complicity of the Applicants, not a case of anticipatory bail. Rejected.

12. At this stage, Counsel for the Applicants prays that the Applicants be given some time to surrender. The Applicants are granted time till 9th of May 2005, before which date, they shall surrender before the appropriate Court and apply for regular bail, if so advised, failing which, the Investigating Officer can proceed against them in accordance with law.

13. The Applicants shall give advance notice to the Investigating Officer before moving the appropriate Court for regular bail, which will be considered on its own merits in accordance with law.

14. In the meantime, the Applicants shall report to the Investigating Officer as and when called upon, for the purpose of investigation of the case.

A.M.KHANWILKAR, J.